

Bruce F. Fain  
Murphy, Kirkpatrick & Fain, P.L.L.P.  
208 North Broadway, Suite 208  
P.O. Box 429  
Billings, MT 59103-0429  
Phone: (406) 256-9700  
Fax: (406) 256-9755  
E-mail: bruce@murphkirk.com  
I.D. Number: 2737

Attorneys for Plaintiff  
Auto Auction of Montana

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA

In re:  
  
INCREDIBLE AUTO SALES, LLC,  
  
Debtor.

CASE NO. 06-60855

Adversary No.

---

AUTO AUCTION ASSOCIATES OF  
MONTANA, INC., d/b/a AUTO  
AUCTION OF MONTANA a/k/a AUTO  
AUCTION OF BILLINGS,

Plaintiff.

v.

INCREDIBLE AUTO SALES, LLC,  
  
Defendant.

**COMPLAINT**

- - - - -  
AUTO AUCTION ASSOCIATES OF MONTANA, INC., d/b/a AUTO AUCTION

OF MONTANA a/k/a AUTO AUCTION OF BILLINGS ("Auto Auction"), through its counsel, requests that the Court enter an order requiring the Debtor to surrender certain vehicles in the possession of the Debtor, pursuant to 11 U.S.C. § 546(c). The vehicles subject to this request are specifically identified on the attached Exhibits A and A-1 ("Vehicles"). In addition, Auto Auction requests a temporary restraining order and a preliminary injunction barring the Debtor from encumbering, selling, transferring, trading, or disposing of in any manner the Vehicles on the attached Exhibits A and A-1 and also remain insured with Auto Auction as a loss payee for such Vehicles during the pendency of this action.

#### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. § 546, and Fed.R.Bank.P. 65.

2. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (b)(2)(E).

3. Venue is proper pursuant to 28 U.S.C. § 1409(a).

4. Auto Auction is a licensed automobile company and a creditor and/or interested party and has standing to bring this action pursuant to 11 U.S.C. § 546(c) and Fed.R.Bank.P. 7065.

5. Incredible Auto Sales, LLC ("Incredible") is a retail and wholesale dealer of automobiles and the debtor in the above-captioned Chapter 11 case.

6. As of the date of filing of the petition in this case,

Incredible's principal place of business is 1832 King Avenue West, Billings, Montana 59102.

#### **GENERAL ALLEGATIONS**

7. Auto Auction restates and realleges the allegations set forth in paragraphs 1 through 6 as if set forth in full.

8. Incredible acquired certain automobiles through Auto Auction commencing on or about September 27, 2006, through October 11, 2006.

9. The Vehicles received by Incredible are identified by sale date, vehicle year, vehicle make, vehicle model, vehicle VIN and estimated values on the attached Exhibits A and A-1, which are incorporated by this reference as if set forth in full.

10. The Vehicles were sold to Incredible on credit and checks tendered for payment of the Vehicles were returned for insufficient funds and, subsequent to tender of other checks, the Debtor contacted Auto Auction and informed it that there were insufficient funds to pay any of the checks.

11. The Debtor's principal, Nick Gutierrez, was to meet with the principal of Auto Auction on October 17, 2006, in order to reach a resolution of this matter, but did not show and his counsel informed counsel for Auto Auction of the bankruptcy filing which was made on October 17, 2006.

12. On October 17, 2006, counsel for Auto Auction provided a written reclamation claim for a total of 11 Vehicles to the Debtor, its counsel, and the United States Trustee. A true and correct

copy of the reclamation demand letter is attached as Exhibit B and incorporated by this reference as if set forth in full.

13. On October 18, 2006, counsel for Auto Auction provided a second reclamation claim to the Debtor, its counsel, and the United States Trustee after it was discovered that an additional eight (8) Vehicles were subject to reclamation claims. A true and correct copy of the second reclamation letter is attached as Exhibit C and incorporated by this reference as if set forth in full. A letter with a corrected Exhibit A-1, which corrected four VIN numbers on a previous copy of Exhibit A-1 was sent on October 18, 2006. A copy is attached as Exhibit D.

**COUNT I - RECLAMATION CLAIM UNDER 11 U.S.C. § 546**

14. Auto Auction restates and realleges the allegations set forth in paragraphs 1 through 12 as if set forth in full.

15. Auto Auction sold the Vehicles to the Debtor in the ordinary course of business at a time when the Debtor was insolvent, all of which occurred within forty-five (45) days of the commencement of the case.

16. Auto Auction has provided a timely written demand reclaiming the Vehicles.

17. Auto Auction is entitled to assert a reclamation claim under the provisions of 11 U.S.C. § 546(c) for the Vehicles set forth on the attached Exhibits A and A-1.

18. The Court should enter an order requiring the Debtor to surrender all of the Vehicles on the attached Exhibits A and A-1 to

Auto Auction immediately.

**COUNT II - INJUNCTIVE RELIEF**

19. Auto Auction restates and realleges the allegations set forth in paragraphs 1 through 16 as if set forth in full.

20. Auto Auction is requesting the issuance of a temporary restraining order and a preliminary injunction to restrain the Debtor from encumbering, selling, transferring, trading, or disposing of in any manner the Vehicles on the attached Exhibits A and A-1 and to ensure that the Vehicles remain insured with Auto Auction as a loss payee for such Vehicles during the pendency of this action.

21. Auto Auction is entitled to a grant of temporary restraining order because the encumbrance, transfer or loss of any of the Vehicles will result in immediate and irreparable injury, loss, or damage to Auto Auction before Debtor or Debtor's counsel may be heard, all as set forth in the separate motion and supporting documents filed herein.

22. Auto Auction is entitled to a preliminary injunction Debtor from encumbering, selling, transferring, trading, or disposing of in any manner the Vehicles on the attached Exhibits A and A-1, and to ensure that the Vehicles remain insured with Auto Auction as a loss payee for such Vehicles during the pendency of this action because it is likely that Auto Auction will succeed upon the merits of this action and there is a possibility of irreparable injury in that all reclamation rights could be lost

unless such an injunction is issued and/or there are serious questions going to the merits which are raised by Auto Auction and any balancing of hardship favors Auto Auction.

WHEREFORE, Auto Auction respectfully requests the following relief:

1. The issuance of temporary restraining order and a preliminary injunction to restrain the Debtor from encumbering, selling, transferring, trading, or disposing of in any manner the Vehicles on the attached Exhibits A and A-1 and to ensure that the Vehicles remain insured with Auto Auction as a loss payee for such Vehicles during the pendency of this action;

2. A judgment declaring that the Vehicles are to be immediately surrendered to Auto Auction.

DATED this 18 day of October, 2006.

Murphy, Kirkpatrick & Fain, P.L.L.P.  
208 North Broadway, Suite 208  
P.O. Box 429  
Billings, MT 59103-0429

By: 

Bruce F. Fain  
Attorneys for Plaintiff Auto  
Auction of Montana

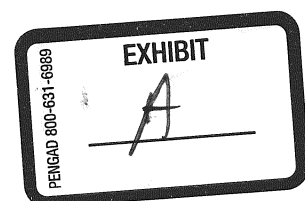
## EXHIBIT A

## AUTO AUCTION v. INCREDIBLE AUTO SALES

| SALE<br>DATE | YEAR | MAKE      | MODEL   | VIN               | ESTIMATED<br>VALUE |
|--------------|------|-----------|---------|-------------------|--------------------|
| 10/04/06     | 2005 | Chevrolet | Malibu  | 1G1ND52F75M177176 | \$8,700.00         |
| 10/04/06     | 2005 | Kia       | Optima  | KNAGD126855426066 | \$8,050.00         |
| 10/04/06     | 2004 | Ford      | Ranger  | 1FTZR44E34PA07225 | \$9,950.00         |
| 10/04/06     | 2005 | Pontiac   | Montana | 1GMDV23E75D121917 | \$12,600.00        |
| 10/04/06     | 2005 | Chrysler  | Sebring | 1C3EL46X35N568587 | \$9,400.00         |
| 10/04/06     | 2003 | Chevrolet | Malibu  | 1G1ND52J93M699843 | \$7,000.00         |
| 10/11/06     | 2005 | Kia       | Spectra | KNAFE121755172069 | \$8,050.00         |
| 09/27/06     | 2006 | Chevrolet | Malibu  | 1G1ZT51F46F115830 | \$9,700.00         |
| 10/04/06     | 2006 | Kia       | Sorento | KNDJC733565573207 | \$13,775.00        |
| 10/04/06     | 2004 | Chevrolet | Blazer  | 1GNDT13X74K163169 | \$12,060.00        |
| 10/11/05     | 2005 | Kia       | Rio     | KNADC125356361327 | \$6,450.00         |

Total Value

\$105,735.00

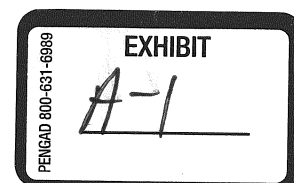


## EXHIBIT A-1

## AUTO AUCTION v. INCREDIBLE AUTO SALES

| SALE<br>DATE | YEAR | MAKE      | MODEL          | VIN               | ESTIMATED<br>VALUE |
|--------------|------|-----------|----------------|-------------------|--------------------|
| 10/04/06     | 2003 | Dodge     | Stratus        | 1B3EL36X83N520717 | \$6,700.00         |
| 10/04/06     | 2005 | Chrysler  | Town & Country | 2C4GP44R95R589847 | \$11,800.00        |
| 10/04/06     | 2007 | Dodge     | Caliber        | 1B3HB48B27D530095 | \$15,300.00        |
| 10/04/06     | 2005 | Suzuki    | Forenza        | KL5JD56Z55K174188 | \$7,900.00         |
| 10/04/06     | 2002 | Mercury   | Sable          | 1MEFM50U12G614160 | \$5,900.00         |
| 10/04/06     | 2005 | Kia       | Spectra        | KNAFE121655124532 | \$9,260.00         |
| 10/04/06     | 2006 | Pontiac   | G6             | 1G2ZF55B164176395 | \$14,560.00        |
| 10/04/06     | 2004 | Chevrolet | Cavalier       | 1G1JC12F847235271 | \$7,235.00         |

Total Value

**\$78,655.00**



MURPHY, KIRKPATRICK & FAIN, P.L.L.P.

ATTORNEYS AT LAW

208 North Broadway, Suite 208  
P.O. Box 429  
Billings, MT 59103-0429

James P. Murphy, P.C.  
Stewart R. Kirkpatrick  
Bruce F. Fain \*

www.murphkirk.com  
E-mail: stewart@murphkirk.com

Telephone: (406) 256-9700  
Fax: (406) 256-9755

\* Also Admitted in Texas

October 17, 2006

Neal Jensen  
U.S. Trustee  
Liberty Center, Ste. 204  
301 Central Ave.  
P.O. Box 3509  
Great Falls, MT 59403

neal.g.jensen@usdoj.gov

William L. Needler  
William L. Needler and Associates  
555 Skokie Blvd. Ste. 500  
Northbrook, IL 60062

williamlneedler@aol.com

Clarke B. Rice  
P.O. Box 23563  
Billings, MT 59104

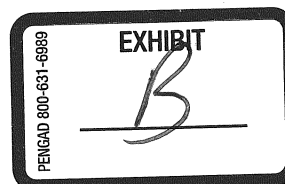
clarkeric@imt.net

RE: Incredible Auto Sales, LLC  
Bankruptcy Case Number 06-60855  
Our File #1062-004

Dear Gentlemen:

This letter is to notify you, and each of you, that our client, Auto Auction of Montana, is demanding reclamation rights under 11 U.S.C. § 546(c). The Debtor obtained possession of various vehicles, each specifically identified on the attached Exhibit, on the dates indicated. The Debtor and its agents tendered checks, some of which were returned for insufficient funds. Our client demanded return of all vehicles prior to the filing of bankruptcy, but return was refused. Auto Auction of Montana is demanding the return of each of the vehicles set forth in the enclosed exhibit.

A copy of this letter has been faxed to the Debtor in order to ensure compliance with the requirements of law. No further action will be taken against the Debtor without seeking relief from the automatic stay.



October 17, 2006  
Page 2

Please feel free to call me if you have any questions or concerns.

Sincerely,

/S/ Bruce F. Fain  
Bruce F. Fain

enc.

c: Incredible Auto Sales, LLC (406) 652-3487

**EXHIBIT A****AUTO AUCTION v. INCREDIBLE AUTO SALES**

| <b>SALE<br/>DATE</b> | <b>YEAR</b> | <b>MAKE</b> | <b>MODEL</b> | <b>VIN</b>        | <b>ESTIMATED<br/>VALUE</b> |
|----------------------|-------------|-------------|--------------|-------------------|----------------------------|
| 10/04/06             | 2005        | Chevrolet   | Malibu       | 1G1ND52F75M177176 | \$8,700.00                 |
| 10/04/06             | 2005        | Kia         | Optima       | KNAGD126855426066 | \$8,050.00                 |
| 10/04/06             | 2004        | Ford        | Ranger       | 1FTZR44E34PA07225 | \$9,950.00                 |
| 10/04/06             | 2005        | Pontiac     | Montana      | 1GMDV23E75D121917 | \$12,600.00                |
| 10/04/06             | 2005        | Chrysler    | Sebring      | 1C3EL46X35N568587 | \$9,400.00                 |
| 10/04/06             | 2003        | Chevrolet   | Malibu       | 1G1ND52J93M699843 | \$7,000.00                 |
| 10/11/06             | 2005        | Kia         | Spectra      | KNAFE121755172069 | \$8,050.00                 |
| 09/27/06             | 2006        | Chevrolet   | Malibu       | 1G1ZT51F46F115830 | \$9,700.00                 |
| 10/04/06             | 2006        | Kia         | Sorento      | KNDJC733565573207 | \$13,775.00                |
| 10/04/06             | 2004        | Chevrolet   | Blazer       | 1GNDT13X74K163169 | \$12,060.00                |
| 10/11/05             | 2005        | Kia         | Rio          | KNADC125356361327 | \$6,450.00                 |

**Total Value****\$105,735.00**

MURPHY, KIRKPATRICK & FAIN, P.L.L.P.  
ATTORNEYS AT LAW

208 North Broadway, Suite 208  
P.O. Box 429  
Billings, MT 59103-0429

James P. Murphy, P.C.  
Stewart R. Kirkpatrick  
Bruce F. Fain \*

www.murphkirk.com  
E-mail: stewart@murphkirk.com

Telephone: (406) 256-9700  
Fax: (406) 256-9755

\* Also Admitted in Texas

October 18, 2006

Neal Jensen  
U.S. Trustee  
Liberty Center, Ste. 204  
301 Central Ave.  
P.O. Box 3509  
Great Falls, MT 59403

neal.g.jensen@usdoj.gov

William L. Needler  
William L. Needler and Associates  
555 Skokie Blvd. Ste. 500  
Northbrook, IL 60062

williamlneedler@aol.com

Clarke B. Rice  
P.O. Box 23563  
Billings, MT 59104

clarkeric@imt.net

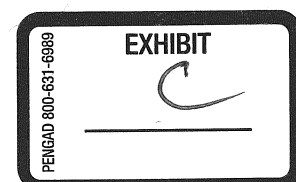
RE: Incredible Auto Sales  
Bankruptcy Case Number 06-60855  
Our File #1062-004

Dear Gentlemen:

You should have received a copy of a reclamation demand letter from this office yesterday. In the event you did not, I have enclosed another copy for your files.

It appears that there are eight (8) more vehicles which are subject to similar claims. As before, the Debtor obtained possession of various vehicles, each specifically identified on the attached Exhibit, on the dates indicated. As in my prior letter, the Debtor and its agents tendered checks, for which there are insufficient funds.

Auto Auction of Montana, is demanding reclamation rights under 11 U.S.C. § 546(c). Auto Auction of Montana is demanding the return of each of the vehicles set forth in the enclosed exhibit.



Neal Jensen  
William L. Needler  
Clarke B. Rice  
October 18, 2006  
Page 2

As before, a copy of this letter has been faxed to the Debtor in order to ensure compliance with the requirements of law. No further action will be taken against the Debtor without seeking relief from the automatic stay or taking other appropriate action in the Bankruptcy Court.

Finally, it is our understanding that Mr. Gutierrez has attempted to contact our client. As Mr. Gutierrez is the principal of the Debtor, and has chosen to file Bankruptcy, in order to avoid additional problems please address all inquiries to our office.

Please feel free to call me if you have any questions or concerns.

Sincerely,

/S/ Bruce F. Fain  
Bruce F. Fain

BFF/bff  
encs.

Exhibit A-1  
Oct. 17, 2006 Reclamation Demand Letter

c: Incredible Auto Sales, LLC (406) 652-3487

**EXHIBIT A-1****AUTO AUCTION v. INCREDIBLE AUTO SALES**

| <b>SALE<br/>DATE</b> | <b>YEAR</b> | <b>MAKE</b> | <b>MODEL</b>   | <b>VIN</b>        | <b>ESTIMATED<br/>VALUE</b> |
|----------------------|-------------|-------------|----------------|-------------------|----------------------------|
| 10/04/06             | 2003        | Dodge       | Stratus        | 1B3EL36X83N520717 | \$6,700.00                 |
| 10/04/06             | 2005        | Chrysler    | Town & Country | 2C4GP44R95R589867 | \$11,800.00                |
| 10/04/06             | 2007        | Dodge       | Caliber        | 1B3HB48B270530695 | \$15,300.00                |
| 10/04/06             | 2005        | Suzuki      | Forenza        | KL5JO56Z55K174188 | \$7,900.00                 |
| 10/04/06             | 2002        | Mercury     | Sable          | 1MEFN5OU12G614160 | \$5,900.00                 |
| 10/04/06             | 2005        | Kia         | Spectra        | KNAFE121655124532 | \$9,260.00                 |
| 10/04/06             | 2006        | Pontiac     | G6             | 1G2ZF55B164176395 | \$14,560.00                |
| 10/04/06             | 2004        | Chevrolet   | Cavalier       | 1G1JC12F847235271 | \$7,235.00                 |

**Total Value****\$78,655.00**

MURPHY, KIRKPATRICK & FAIN, P.L.L.P.  
ATTORNEYS AT LAW

208 North Broadway, Suite 208  
P.O. Box 429  
Billings, MT 59103-0429

James P. Murphy, P.C.  
Stewart R. Kirkpatrick  
Bruce F. Fain \*

www.murphkirk.com  
E-mail: bruce@murphkirk.com

Telephone: (406) 256-9700  
Fax: (406) 256-9755

\* Also Admitted in Texas

October 18, 2006

Neal Jensen  
U.S. Trustee  
Liberty Center, Ste. 204  
301 Central Ave.  
P.O. Box 3509  
Great Falls, MT 59403

neal.g.jensen@usdoj.gov

William L. Needler  
William L. Needler and Associates  
555 Skokie Blvd. Ste. 500  
Northbrook, IL 60062

williamlneedler@aol.com

Clarke B. Rice  
P.O. Box 23563  
Billings, MT 59104

clarkeric@imt.net

RE: Incredible Auto Sales  
Bankruptcy Case Number 06-60855  
Our File #1062-004

Dear Gentlemen:

It was brought to my attention that four VINs from the previous Exhibit A-1 were incorrect. I have attached a corrected Exhibit A-1 for the reclamation claim. The corrected VINS are in red on the pdf version and shaded on the fax version.

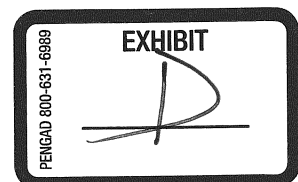
Sincerely,

/S/ Bruce F. Fain  
Bruce F. Fain

BFF/bff  
enc.

Corrected Exhibit A-1

c: Incredible Auto Sales, LLC (406) 652-3487



## EXHIBIT A-1

## AUTO AUCTION v. INCREDIBLE AUTO SALES

| SALE<br>DATE | YEAR | MAKE      | MODEL          | VIN               | ESTIMATED<br>VALUE |
|--------------|------|-----------|----------------|-------------------|--------------------|
| 10/04/06     | 2003 | Dodge     | Stratus        | 1B3EL36X83N520717 | \$6,700.00         |
| 10/04/06     | 2005 | Chrysler  | Town & Country | 2C4GP44R95R589847 | \$11,800.00        |
| 10/04/06     | 2007 | Dodge     | Caliber        | 1B3HB48B27D530095 | \$15,300.00        |
| 10/04/06     | 2005 | Suzuki    | Forenza        | KL5JD56Z55K174188 | \$7,900.00         |
| 10/04/06     | 2002 | Mercury   | Sable          | 1MEFM50U12G614160 | \$5,900.00         |
| 10/04/06     | 2005 | Kia       | Spectra        | KNAFE121655124532 | \$9,260.00         |
| 10/04/06     | 2006 | Pontiac   | G6             | 1G2ZF55B164176395 | \$14,560.00        |
| 10/04/06     | 2004 | Chevrolet | Cavalier       | 1G1JC12F847235271 | \$7,235.00         |
| Total Value  |      |           |                |                   | \$78,655.00        |